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Sub-Commission on Prevention of
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Working Group on Indigenous Populations
Eleventh session
19-30 July 1993
Item 4 of the provisional agenda

STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Information received from Governments

Introduction

1. By its resolution 1982/34 of 7 May 1982, the Economic and Social Council authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to establish annually a working group on indigenous populations to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually, and to give special attention to the evolution of standards concerning the rights of indigenous populations.

2. The Sub-Commission, in its resolution 1992/33 of 27 August 1992, requested the Secretary-General to transmit the report of the Working Group on its tenth session (E/CN.4/Sub.2/1992/33) to Governments for written comments and suggestions for the completion of the second reading of the text of the draft declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1992/33, annex I) at the eleventh session of the Working Group. The Commission on Human Rights endorsed this request in its resolution 1993/31 of 5 March 1993. In accordance with these resolutions, appropriate communications were sent to Governments. The present document contains replies received as of 3 June 1993. Further replies, if any, will be included in addenda to this document.

FINLAND

[Original: English]
[24 May 1993]

1. General comments

1. The Government of Finland emphasizes that the declaration on the rights of indigenous peoples, when achieved, will be a very long-expected and important document on human rights. It is desirable that this urgent declaration, defining the minimum standards for the survival and the well-being of the indigenous peoples, will be approved by the Working Group this year, which is proclaimed the International Year for the World's Indigenous People.

2. The Government of Finland refers to its earlier comments on the draft declaration, more especially to the comment from last year (see E/CN.4/Sub.2/AC.4/1992/1). As regards the details of the draft, the Government of Finland states the following.

2. Specific comments

Preamble

3. It is believed to be the correct solution not to include a definition of the concept of indigenous peoples in the declaration, because it would lead to difficult problems concerning the criteria, borderline cases, subjective vs. objective criteria etc. What could be thought of, however, is the possibility of including in the preamable some reference to certain basic characteristics of all or most indigenous peoples: their historical background, their relationship with the natural environment, etc.

4. The tenth preambular paragraph is of relevance to Finland. The northernmost part of the country, inhabited and used by the Samis, has importance in terms of military strategy. A potential conflict between military authorities and the Sami reindeer herders has already developed concerning the Litmuorvaara radar station. The use of jet planes, operating at very low altitude in military exercises, causes great concern among the Samis, as it is believed to disturb the reindeer and their breeding.

5. The tenth preambular paragraph gives reason to reconsider the use of and, in particular, the decision-making on the use of Sami areas in Finnish Lapland for military purposes and exercises.

Part I

6. Operative paragraph 1. The right to self-determination of indigenous peoples certainly is one of the crucial issues decisive for the outcome of the drafting process. While the Finnish Government has no definite objection to the present formulation, broader acceptance might be achieved through elaborating on the final words of the paragraph ("the right to autonomy and

self-government"). The presentation of various examples of autonomy and self-government (regional, cultural etc) could achieve a broader approval of the draft.

7. Operative paragraph 2. The Universal Declaration of Human Rights could be mentioned.

8. Operative paragraph 3. A more general prohibition of discrimination, following, for example, the lines of article 26 of the International Covenant on Civil and Political Rights, could be considered. It is maybe not unambiguous enough to prohibit any discrimination "based on (their) indigenous identity" if no general prohibition of discrimination on other grounds is inserted.

Part II

9. Operative paragraph 8. The list of examples of "cultural identity and traditions" leaves open the role of various forms of traditional economic life, based on a close relationship with the natural environment. In the case of the Samis, reindeer herding, especially, and also hunting and fishing, constitute essential parts of their cultural identity and traditions. Irrespective of the separate mention in operative paragraph 21, this connection should be mentioned here also.

10. Operative paragraph 13. The right to the use of and access to all forms of mass media has been formulated in such a way that it cannot be understood to refer to State-owned media only. Especially the second sentence, referring to active State measures, gives the paragraph relevance in relation to privately-owned media, as well. This approach is fully acceptable in terms of international human rights law and freedom of expression, as the "effective measures" referred to might include a wide range of various legislative, administrative, economic and other measures.

Part III

11. Operative paragraph 16. The article on land rights is quite far-reaching, even in comparison with article 14 of ILO Convention No. 169, in which a distinction is made between lands traditionally occupied by indigenous peoples and lands "not exclusively occupied by them". A similar approach might be advisable in order to cope with the wide range of existing situations.

12. Operative paragraph 17. The article on restitution of or compensation for previously owned lands is very important and provides for various practical solutions in the existing different situations.

13. Operative paragraph 18. The specific attention given to the protection of the environment is commendable. Specifically concerning military activities, see the comment on the preamble (paras. 4 and 5 above).

Part IV

14. Operative paragraph 22. Under positive State measures, the possibility of granting certain economic rights only to persons belonging to an indigenous people, in order to secure the future of their culture and way of life, should be included. Especially in the present time of international economic integration, it is important to establish a rule of international law that preferential treatment for indigenous peoples, even in the economic sphere, does not constitute discrimination.

15. Operative paragraph 30. The explicit inclusion of the exercise of some participatory rights across borders could still be discussed with a view to achieving a solution acceptable to most.

16. Operative paragraph 36. The article on special protection in periods of armed conflict is highly commendable and corresponds to the traditional experiences of the Samis.

17. Operative paragraph 38. The placing of the article is somewhat confusing. The issue of relocation could more appropriately be dealt with in connection with land rights (part III).

MEXICO

[Original: Spanish]
[2 June 1993]

1. The Government of Mexico considers that the draft universal declaration on the rights of indigenous peoples generally meets the aspirations and demands of the Mexican indigenous peoples.

2. The rights of indigenous peoples must be protected with full respect for their cultural identities, without expecting them to abandon their cultures in order to improve their level of living. It is the will of these peoples to remain indigenous and they claim the right to cultural difference; there is no question of granting them exceptional treatment but, rather, of giving them equal treatment.

3. It is important to specify that the right mentioned in this draft for the indigenous peoples to determine freely their relations with States does not imply any secession or separatism with respect to the decisions of the national State. In this sense, it is stressed that the indigenous question is not a marginal issue among the nation's problems and that it constitutes an integral part of the national situation.

4. Nor is there any intention to extend special treatment to these peoples, while recognizing that indigenous groups have their own characteristics, it is necessary to create mechanisms and means of access to enable these groups to accede to the development process in their own countries in the same manner as the population as a whole.

5. In this context, there is one aspect which should form an integral part of the declaration, namely the recognition of the right of indigenous peoples to participate in the formulation of development strategies by means of the integrated efforts of Governments and the indigenous populations themselves.

6. Although the draft urges States to influence and apply effectively all the international instruments which refer to the indigenous peoples, it fails to make an appeal to the international community to accede to and ratify, as the case may be, the international instruments in question. Such is the case of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, bearing in mind the high proportion of indigenous Mexicans who have to work abroad.

7. It must be pointed out that the expansion and strengthening of international legislation with the help of the views of the indigenous persons themselves will contribute to securing legislation at the national level which embodies the fundamental rights of the indigenous peoples and at the same time will assist in improving the conditions which currently afflict that population.

8. Lastly, the Government of Mexico expresses its appreciation for the work performed by the Working Group in formulating the declaration and hopes that it will be completed shortly. In addition, it points out the desirability of creating means and mechanisms to enable these groups to have their own area of expression and decision-making within the United Nations system.

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STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Information received from Governments

REPUBLIC OF CHAD

[19 May 1993]
[Original: French

1. The comments of the Chadian Government on the draft universal declaration on the rights of indigenous peoples relate to different sections of the report of the Working Group on Indigenous Populations on its tenth session (E/CN.4/Sub.2/1992/33).

2. These comments are as follows:

(a) Pages 22 and 23: All over the world indigenous peoples are the victims of abuses committed by governments or by the private sector with regard to land and natural resources. Thus their ancestral lands are frequently expropriated. The Chadian Government expresses the following wish:

> That the draft declaration on the universal rights of indigenous peoples should include measures to protect such peoples against inhuman practices of this kind. That is the function of the Sub-Commission on the Protection of Minorities.

(b) Page 28: Any development plan (urbanization, road building, etc.) should take account of ancestral lands, which are a sacred right that should not be taken away from aborigines. To that end it is essential that the United Nations should define the status of indigenous peoples in international law.

(c) Page 38: It is important that a joint body (Governments, international organizations, non-governmental organizations and indigenous peoples) should be set up at the national level to initiate, monitor and evaluate activities on behalf of indigenous populations.

(d) Page 40: In connection with the protection of cultural and intellectual property, the former colonial Powers should be required to restore to indigenous populations cultural property still confiscated by them.

(e) Page 45 (annex I): In the eighth preambular paragraph, it would be desirable to add the following: "and from any form of manipulation and exploitation by those who hold power".

(f) General remark: In annex I, parts I to IV and operative paragraphs 1 to 30 list different rights of indigenous peoples. However, the authors of the draft declaration already adopted on first reading by the Working Group have not provided for any penalties in the event of violations of these rights by Governments.

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STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Information received from United Nations organs, specialized agencies and intergovernmental organizations

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2. World Health Organization . . . . . .

GE.93-14018 (E)

Introduction

1. By its resolution 1982/34 of 7 May 1982, the Economic and Social Council authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to establish annually a working group on indigenous populations to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually, and to give special attention to the evolution of standards concerning the rights of indigenous populations.

2. The Sub-Commission, in its resolution 1992/33 of 27 August 1992, requested the Secretary-General to transmit the report of the Working Group on its tenth session (E/CN.4/Sub.2/1992/33) to intergovernmental organizations for specific comments and suggestions for the completion of the second reading of the text of the draft declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1992/33, annex I) at the eleventh session of the Working Group. The Commission on Human Rights endorsed this request in its resolution 1993/31 of 5 March 1993. In accordance with these resolutions, appropriate communications were sent to intergovernmental organizations. The present document contains replies received as of 1 June 1993. Further replies, if any, will be included in addenda to this document.

Information received from specialized agencies

United Nations Development Programme

[27 April 1993]
[Original: English]

1. The Working Group may consider including in the declaration recommendations made at the United Nations Conference on Environment and Development, in Agenda 21 and the Rio Declaration on Environment and Development.

2. Recommendations in these documents that are not explicitly covered by the draft declaration include:

(a) The establishment of a process to empower indigenous people and their communities through, among other measures, the development and strengthening of national dispute-resolution arrangements in relation to settlement of land and resource-management concerns (Agenda 21, chap. 26, para. 26.3);

(b) The establishment, of arrangements to strengthen the active participation of indigenous people and their communities in the national formulation of policies, laws and programmes relating to resource management and other development processes that may affect them, and their initiation of proposals for such policies and programmes (Agenda 21, chap. 26, para. 26.3);

(c) The establishment by Governments, in full partnership with indigenous people and their communities, of national arrangements to consult

with indigenous people and their communities with a view to reflecting their needs and incorporating their values and traditional and other knowledge and practices in national policies and programmes in the field of natural resource management and conservation and other development programmes affecting them (Agenda 21, chap. 26, para. 26.6).

World Health Organization

[24 May 1993]
[Original: English]

1. Operative paragraphs 23, 24, 27 of the draft declaration deal with the right to determine, plan and implement health programmes, to traditional medicines and health practices and to autonomy in health affairs; operative paragraph 11 provides for access to education. There is, however, no provision for access to health services, including those in the event of catastrophe, emergency, civil strife, etc.

2. It might, therefore, be in order to include an additional operative paragraph along the following lines:

> "Indigenous peoples have the right to access to all levels and forms of health services and the right to health development. Health is a fundamental human right, inseparable from individual liberties, and from the right to development. Indigenous communities, families and individuals have the right to complete physical, mental and social well-being in a spirit of equity and social justice."

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STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

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A. United Nations Educational, Scientific and Cultural Organization 2

B. Food and Agriculture Organization of the United Nations 2

C. International Labour Organisation 2

GE.93-14169 (E)

A. United Nations Educational, Scientific and Cultural Organization

[28 May 1993]
[Original: English]

1. Preambular paragraphs: the formulation of the first preambular paragraph might be divided into two paragraphs, the first ending with the words "international standards"; the second would then start with "Recognizing," etc. It is of the utmost importance that the principle stated in the first part of preambular paragraph 1 be clearly set out.

2. Operative paragraphs: part II might begin with operative paragraph 6 and include operative paragraph 19 from part III; in this way, the elements concerning education, culture, intellectual property, etc., would be grouped into one set of operative paragraphs, thus enhancing the unity of the above-mentioned elements.

B. Food and Agriculture Organization of the United Nations

[31 May 1993]
[Original: English]

The draft declaration seems to be very general in nature and does not address details of specific issues of concern to the indigenous populations. Apart from this general comment, we consider that the declaration could be strengthened considerably by including in it the commitment of the 159 countries which participated in the International Conference on Nutrition (ICN, Rome, 5-11 December 1992) to "recognize that access to nutritionally adequate and safe food is a right of each individual" (para. 1, World Declaration on Nutrition) and to the specific calls for protecting and promoting the nutritional well-being of indigenous peoples. The need to monitor and address the condition of indigenous populations is first highlighted under section II of the Plan of Action: "Major Policy Guidelines" (para. 14). Attention is again called to the vulnerable state of some indigenous populations in paragraph 36 of section IV.6: "Caring for the socio-economically deprived and nutritionally vulnerable", and paragraph 36 (i) calls on Governments, in cooperation with other concerned parties, to "enhance the nutritional status of the indigenous people through the development and implementation of culturally acceptable strategies that involve the community."

C. International Labour Organisation

[14 June 1993]
[Original: English]

The following comments are based on the revised version of the draft declaration being submitted to the Working Group at its 1993 session.

I. GENERAL QUESTIONS

A. Compatibility with ILO standards

1. The ILO's principal concern with regard to the draft declaration is the possibility that the declaration, as finally adopted by the General Assembly, will be inconsistent with the ILO's Indigenous and Tribal Peoples Convention, 1989 (No. 169). The Working Group will no doubt agree that the declaration should in no case contain lower standards than the ILO Convention - already conceived as minimum standards - as this would be an undesirable retrogression in international human rights law. This is not a concern in the draft in its present form, which appears to be in general conformity with the ILO standards, but it does apply at the later stages of consideration through which the draft must pass when it has been adopted by the Working Group. It is therefore the ILO's hope that measures will be taken to ensure that this does not occur. While the ILO intends to take an active part in any such future discussions, some suggestions in this regard are made below.

B. Terminology and definition

2. The first concern in this connection is that the draft declaration - and the title of the Working Group itself - speak of "indigenous" peoples or populations, without the ILO's wider term "indigenous and tribal". The ILO has pointed out repeatedly, orally and in writing, that this is significantly narrower than the ILO standards. It is noted that a number of countries have stated specifically that their own situations are not covered by the term "indigenous", though agreeing that they are covered by the term "indigenous and tribal". There is a risk that the coverage of the draft declaration would be considered to be geographically narrower than the ILO instruments. The adoption of universal and not regional standards should be the Working Group's aim.

3. There are two ways in which this problem might be corrected. The first and most obvious would be to adopt the terminology in the ILO Conventions, thus eliminating future problems of possible incompatibility. This would bring the draft declaration into line with existing international law on the subject and facilitate coordination between ILO and the United Nations in the future. The alternatives, if this term does not meet with agreement, would be to add "and others living in similar situations", or to ensure that the term "indigenous" has a wider coverage than its restrictive literal meaning and that it is understood to be coextensive with the coverage of the ILO Convention.

II. PREAMBLE

4. The draft still contains no reference to ILO Conventions Nos. 107 and 169, which constitute the existing international law on the subject. It should be noted, of course, that the United Nations and the other specialized agencies in the United Nations system took an open part in drafting these standards, and that they already constitute a wide measure of agreement. Omission of this reference increases the likelihood that the draft declaration will not have Convention No. 169 as a point of reference at later stages of

its drafting, and will make it easier to amend it in ways which are inconsistent with the Convention.

5. It is therefore proposed to insert, after the fifteenth preambular paragraph, the following:

> "Noting the adoption by the International Labour Organisation, with the collaboration and cooperation of other parts of the United Nations system, of the Indigenous and Tribal Populations Convention, 1957 (No. 107) and the Indigenous and Tribal Peoples Convention, 1989 (No. 169), which have been ratified by a number of States and which constitute minimum standards in this regard,".

6. Eighteenth preambular paragraph. It is not accurate to state that this declaration is a first step in the recognition, etc., of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field. It will be well known to the Working Group that the ILO has been adopting standards relating to indigenous and tribal peoples since well before the establishment of the United Nations itself, and that the only integrated programme of technical assistance for indigenous populations - in which the United Nations and other bodies in the system participated under the general coordination of the ILO - was the Andean Indian Programme which operated from 1952 to 1972.

7. It is therefore necessary to replace the word "first" by "further".

III. OPERATIVE PARAGRAPHS

8. ILO has few remarks on this part of the draft. It is in most cases compatible with Convention No. 169, and in some cases uses the same formulations.

9. Paragraph 11. In the first line, the words "revitalize and practise" should be in the opposite order. The present formulation implies that there are no indigenous cultural traditions which are presently vital.

10. Paragraph 13. Same comment.

11. Paragraph 26. Essentially the same comment as for paragraphs 11 and 13. Protection should come before recreation (a better word for the same concept would perhaps be "restoration").

12. Paragraph 28. Second sentence: "taken to mitigate" should be replaced by "which have".

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STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Information received from indigenous peoples' and non-governmental organizations

GE.93-14060 (E)

Introduction

1. By its resolution 1982/34 of 7 May 1982, the Economic and Social Council authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to establish annually a working group on indigenous populations to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually, and to give special attention to the evolution of standards concerning the rights of indigenous populations.

2. The Sub-Commission, in its resolution 1992/33 of 27 August 1992, requested the Secretary-General to transmit the report of the Working Group on Indigenous Populations on its tenth session (E/CN.4/Sub.2/1992/33) to indigenous peoples' and non-governmental organizations for written comments and suggestions for the completion of the second reading of the draft declaration on the rights of indigenous peoples contained in annex I to that report at the eleventh session of the Working Group. The Commission on Human Rights endorsed that request in its resolution 1993/31 of 5 March 1993. In accordance with those resolutions, appropriate communications were sent to the relevant organizations.

3. The present document contains replies received as of 3 June 1993 from indigenous peoples' and non-governmental organizations. Further replies, if any, will be included in addenda to the present document.

SAMI PARLIAMENT

[Original: English]
[18 March 1993]

GENERAL

1. Although the conditions of the indigenous peoples in the world have undergone positive changes in many States, the Sami Parliament does not yet find the situation satisfactory. Consequently, the Sami Parliament considers the work of the Working Group on Indigenous Populations to achieve a declaration on these peoples to be extremely important and urgent. Moreover, the Sami Parliament hopes that the Declaration on the Rights of Indigenous Peoples, defining the minimum standards for the rights of the indigenous peoples in order to secure their survival and their well-being, will be approved by the United Nations as soon as possible.

DRAFT DECLARATION

2. In the opinion of the Sami Parliament the central significance of an unspoilt environment to the safeguarding of the culture and the well-being of the indigenous peoples should, in accordance with the statements of the United Nations Conference on Environment and Development in Rio de Janeiro (June 1992), be emphasized already in the preambular paragraphs of the Declaration. In this context the words "and the pollution and destruction of the environment" could be added to the first paragraph of the preamble as

follows: "... resulting in the dispossession of their lands, territories and resources and the pollution and destruction of the environment, as well as ...".

3. The civil servants' understanding of and respect for an indigenous people might be increased if they knew the language of this people. This would also be a more flexible arrangement for both parties than interpretation. For these reasons the Sami Parliament proposes that to part II, paragraph 10, be added the words "through civil servants knowing the language of the indigenous people or" as follows: "... where necessary, through civil servants knowing the language of the indigenous people or the provision of interpretation or by other effective means".

4. The Sami Parliament wishes to make sure that the protection referred to in part III, paragraph 19, involves protection against the exploitation, misuse or falsification by outside parties of the products of the intellectual property of the indigenous population. If the words "against outside parties" would make the matter clearer, the Sami Parliament proposes that they be added as follows: "Indigenous peoples have the right to special protection against outside parties, as intellectual property ...".

5. The Sami Parliament finds that the members of an indigenous people are to enjoy full civil rights in the States in which they live. Consequently, the words "as citizens with full rights" should be added to part IV, paragraph 25, of the Declaration as follows: "Indigenous peoples have the right to participate as citizens with full rights on an equal footing with all other citizens ...".

6. Finally, the Sami Parliament states that in its opinion the views of the Finnish Samis will best be brought forward in the preparation of the Declaration if a representative of the Sami Parliament will take part, as before, in the preparatory work in the delegation of the Finnish Government.

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Information received from indigenous peoples' and non-governmental organizations

Introduction

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GE.93-14219 (E)

Centre for the Study of Developing Societies (India)

General observation

3. The draft declaration in respect of the indigenous peoples contains several provisions for international action including action by transnational corporations. For instance, at part III, item 20, it has been mentioned, "Indigenous people have the right to require that States and domestic and transnational corporations consult with them and obtain their free and informed consent prior to the commencement of any large-scale projects." While it recognizes the right of the indigenous peoples to be consulted, it also invests transnational corporations (TNCs) with the right to obtain "free" and "informed consent" of the indigenous peoples. In the context of the experience of many third world countries, not only about the operations of TNCs but even of the International Monetary Fund and the World Bank, as aptly reflected in the statement from the Third General Assembly of the Ecumenical Association of the Third World Theologians held at Nairobi from 5-16 January 1992: one must be very cautious that the rights of the "indigenous" do not become a euphemism for the international right of TNCs and other international agencies which have to establish their credentials convincingly.

4. Apart from problems of this type, the global socio-political order which provides the backdrop of the rights of the indigenous peoples should be indicated in the preamble to the declaration; otherwise the declaration, which has many laudable postulates, can be hijacked to reinforce world hegemonic interests.

5. That the apprehension of a rearguard action by vested interests in the name of indigenous rights is not unreal would be obvious from two facts. To enable the representatives of the indigenous peoples to participate in the annual deliberations of the working group a "voluntary fund" was created. The major contributors to this fund include a transport company, not known for much humanitarian concern. It is operated by a Board of Trustees, at least one of whose members is an "indigenous". There is also a United Nations working group. A close look into the composition of the working group shows that it is not democratically constituted.

6. For wider participation, a meeting is held annually where spokesmen of the indigenous peoples participate; some of them are financed from the voluntary fund. the criteria of selection of the representatives of the indigenous peoples for receiving such assistance do not appear to be clear. In the case of India, the gentleman who was provided financial support year after year was, according to his own admission, chosen by "accident".

7. It also appears that there is an understandable vagueness in the matter of identification of the indigenous. The declaration does not define the "indigenous". There is, however, a working definition, said to be prepared in 1983 by a Special Rapporteur appointed by the United Nations in 1972. In the discussion reports of the United Nations Working Group, estimates of the world's indigenous peoples have been projected to be around 300 million. An organization linked to the United Nations has stated that in Europe, except for the Inuits and Samis of the circumpolar region, no peoples, not even the

Gypsies and Basques, are recognized as indigenous because Europe was not under colonial rule. But by a curious twist of logic, 70 million persons in China and a good number in Thailand, which were not under colonial rule, have been treated as indigenous. This criticism is not a criticism of the merit or demerit of certain identifications; it is a criticism of the double standard of the approach which makes the exercise suspect. The suspicion gets further reinforced when one finds that an International Labour Organization representative had stated in a meeting sponsored by the United Nations working group that certain matters which the ILO could not go into due to structural constraints during the preparation of the ILO Convention on Tribal and Indigenous Peoples in 1989, would be dealt with in this forum. It is not clear whether he was officially authorized to make this statement. If not, he had gone beyond his mandate.

8. The draft declaration contains five parts. Part I is preceded by 16 paragraphs without any heading. Obviously these constitute the preamble. In the present review these 16 paragraphs will first be discussed under the general rubric "preamble". These paragraphs have not been numbered in the draft declaration. In this review the references to the numbers in the preamble relate to the sequence in which the paragraphs occur. In the different parts of the declaration the various items have, however, been numbered. In the present review these have been indicated by the same item numbers. With this clarification, observations will first be made on the preamble.

9. In the preamble paragraphs 1, 2, 3, 4, 8, 9, 11, 12 are non-controversial and should be accepted by all concerned with democratic values and human rights. But the remaining parts require some scrutiny.

10. Paragraph 5 in the preamble states that "treaties, agreements and other constructive arrangements between States and indigenous peoples continue to be matters of international concern and responsibility". This seems to be either rhetoric or double-speak. ILO was closely associated with the formulation of the declaration. Convention No. 169 of the ILO adopted in 1989 speaks of a pre-invasion indigenous "population" and not "people", thereby giving an escape route to the European invaders not to reopen the issue of restoration of the rights of the peoples which were disclaimed during the nineteenth century, notwithstanding the presence of pre-existing treaties, agreements and constructive arrangements. On the other hand, this paragraph may provide a handle to the autocrats in Asia and Africa with whom the colonial rulers made agreements and constructive arrangements over the heads of their peoples, to demand the restoration of the rights bestowed by the colonial rulers in self-interest, even though they have since been thrown out by the indigenous peoples concerned through democratic means.

11. Paragraph 6 of the preamble welcomes the fact that "indigenous peoples are organizing themselves in order to bring an end to all forms of discrimination and oppression". It is a good statement as far as it goes. But it gives an isolationist stance to the struggles of the indigenous peoples. While it had been a mistake on the part of many Marxists in the past to consider the indigenous problem purely as a class problem, ignoring the problems of trans-class cultural and historical rights, it would also be wrong

to project the problem of the indigenous peoples completely in isolation from the shared problems of the disadvantaged sections of the polity. The statement requires to be elaborated to put it in perspective.

12. Paragraph 7 speaks of the need to respect the rights of indigenous peoples to their lands, territories and resources which stem from their history, philosophy, cultures and spiritual and other traditions. By itself it is a good statement. But then it is to be examined whether item 14 in part II is congruous with this statement. Logically it implies that technical financial aid should be compatible with the history, philosophy and traditions from which the rights emanate. Otherwise, through aid the nature of the right will be changed and the source of the sanction of the right will be appropriated by the aid-giving agency. there are case studies to show that this has happened and also there are instances of resistance to the same by the tribal communities.

13. Paragraph 10, to the effect that lands and territories of the indigenous peoples should not be used for military purposes without their consent, is marked by equivocation. It also means that military use can be made with their consent and it is well known how in some cases "consent" is manipulated. This statement should be made contextual, giving an analysis of the present day geopolitical pressures operating to the disadvantage of the tribal and indigenous peoples in particular and of the third world countries in general.

14. Paragraph 13 is political tightrope-walking. For historical reasons identification of the indigenous as distinct from others in Asia and Africa, particularly in Africa, is a complex problem. In the Americas, Australia and New Zealand it is much more simple. In Africa attemtps to hustle change in relations of peoples with their respective States had shown disastrous effect. On the other hand, in Canada, where the problem is much simpler, an attempt in the direction suggested has failed. In the light of these experiences the paragraph should be changed.

15. Paragraph 14 is completely misleading. Some of the international covenants, including the Universal Declaration of Human Rights, which enshrines the right of self-determination, have undergone considerable change in their meaning in the post-war period because of three facts: (a) decolonization of a large part of the world; (b) ecological imperatives; (c) global interdependence and the growing importance of non-State institutions. There are judicial pronouncements taking cognizance of some of these changes. The irony is that while the West has shifted considerably from the earlier concept in their collective hegemonistic interest, they are trying to promote it in the third world countries. This paragraph seems to reflect the Western perspective. It is a hybrid of Hobbsian and Lockean tenets in modern garb.

16. Paragraph 15 can be operated only if the nuances of self-determination in diverse contexts are amplified. Besides, one must didfferentiate between self-determination as a principle and as a right.

17. Paragraph 16 will be looked upon with suspicion by third world countries, so long as United Nations forums are seen as dominated by a single Power or a cluster of Powers.

18. This critique of the preamble to the draft declaration implies that either the concept of indigenous should not apply to Asia and Africa and that differentiation of indigenous and tribal, as is done by the ILO, should be retained or that the declaration should be redrafted taking into consideration the sensitivities and realities on the ground prevailing in Asia and Africa. The historical moment when the international forums are dominated by a single Power and its secondary alter-egos, is not the right one for the declaration of the type that has been drafted. But existence of exploitative interests violating basic human rights of the tribal and the indigenous peoples in various countries, including the third world countries, should not be overlooked. A realistic declaration should certainly be made and should be enforced through informed cooperation of indigenous peoples, other collectivities with broadly similar interests and human right activitists.

19. Coming over to specific items included in the declaration, the following comments are made:

Part I

Item 1 - It speaks of "right of self-determination in accordance with international law", an integral part of which is the "right to autonomy and self-government". Obviously it is marked by equivocation and, besides, interpretation of self-determination in international law is not uniform, even among the members of the judiciary.

Item 2 - Should be universally recognized in principle and the modality of operationizing the same should be worked out through authentic broad consultation.

Part II

Items 4 and 5 - Should be operationalized by all. But there are indications that in the context of the functioning of United Nations Working Group on Indigenous Populations, some individuals, if not groups, do not hesitate to transgress the principle enunciated at item 4.

Item 6 - It is not clear how individual self-identification comes within the ambit of this declaration. Besides, technically individual cultural characteristics makes no sense.

Item 7 - Should be accepted by all. But this should not invest any right in any individual or group to carry on unfounded propaganda against others in the name of the indigenous peoples. This has happened and it seems that there is a concerted effort in this direction by various international agencies and motivated persons.

Item 8 - This item speaks of indigenous rights to revive and restore cultural, religious and spiritual property taken from them without their free and informed consent or in violation of their own laws. This is certainly desirable in principle but the snag lies in the proviso of "free and informed consent". How this will be determined requires some elaboration.

Item 9 - Should be accepted by all.

Item 10 - Should be accepted by all.

Item 11 - This item speaks of the indigenous right to their own educational system and maintenance of educational institutions of their own. This right can be exercised with reference to indigenous culture, religious and philosophical traditions. This has been found to be misused by powerful international and national elite forums, for incarnation of alien values.

Item 12 - This item speaks of the dignity and diversity of indigenous culture, histories and traditions. This is a matter of great importance. Even now histories of indigenous and tribal peoples during the colonial period as presented by colonial historians continue in many educational institutions. This requires to be rectified through a crash programme which may be supported by the United Nations Educational, Scientific and Cultural Organization.

Item 13 - This should be acceptable to all.

Item 14 - At the present juncture of history with the concentration of hegemonic power mainly in one country, the third world States have a role to thwart further incursion of hegemonic power. International aid may be used to negate their historical role. It cannot be automatic to bypass the States of the third world. Besides, it should be reformulated so that dependency syndrome is not fostered through international aid; in that case the much vaunted right of self-determination will mean weakening of intra-national cooperation and promotion of international dependency.

Item 15 - The historical association of the indigenous and tribal peoples with their habitat in diverse manners must be recognized.

Item 16 - This item speaks of collective and individual rights over lands, etc. It should be clearly stated that where individual rights are subsumed within collective rights, the same cannot be violated by individuals, otherwise the principle enunciated here can be misused. In fact, it has been misused in the past and is being misused today with the support of international aid-giving agencies.

Item 17 - This item speaks of restitution of lands and territories which were confiscated, occupied, used or damaged without their free consent. Much of these processes took place during the colonial rule and much of what has happened in some countries in the post-independence period is the operation of the inertia of the system created by colonial rulers. The erstwhile colonial rulers should pay for restoration of the rights and for repair of the damages. The item should be modified accordingly.

Item 18 - This item speaks of indigenous peoples' right to protection and rehabilitation of their environment and of the right to adequate assistance, including international cooperation. This item, by implication, means international intervention, directly or indirectly. This should be modified and, depending on the historical context, the concerned States, in consultation with the tribal peoples, can claim international cooperation to repair the damages and protect the rights.

Item 19 - In this item intellectual property rights have been projected in a much more diluted form than in an earlier draft. It seems that the United Nations Working Group has capitulated to some extent to the pressure of the World Intellectual Property Organization, which took a position in 1991 that the indigenous peoples are not entitled to hold intellectual property rights.

Item 20 - This item puts transnational corporations at the same level as the States in the matter of consultation with the indigenous peoples about projects to be implemented in their areas. This, as mentioned earlier, is really investing TNCs with the right to usurp the roles of the State and therefore is unacceptable.

Part IV

Item 21 - This item refers to indigenous rights over traditional means of subsistence. These traditional rights were regulated by ecological ethics. Within the same framework these rights must be continued; but the traditional rights must not be used for the national or international market transgressing traditional ecological ethics. Unless this provision is incorporated in the declaration the traditional rights may be manipulated by unscrupulous monopolists for paving the way for green capitalism and for ultimately destroying the conditions for exercise of the rights.

Item 22 - Indigenous rights to special measures for improvement of their economic and social conditions is a minimal human right and must be agreed to by all.

Item 23 - Indigenous rights to determine through their own institutions programmes for improvement of the conditions of their life must be agreed to by all, subject to the condition that exercise of these rights is not externally manipulated to destroy the possibility of building up a partnership with the immediate neighbours on the principles of equity, mutual respect and trust.

Item 24 - Indigenous rights of traditional medicines and health-care practices must be accepted by all without affecting their right to access to health-care services in other systems as well.

Item 25 - This item speaks of legal pluralism and non-discrimination in political, economic, social and cultural life. This principle should certainly be applied universally.

Item 26 - This item speaks of the participatory right of the indigenous peoples at all levels of the Government. It must be accepted, but it should also negate the right of intervention by external agencies exclusively, to promote the interest of the indigenous peoples as implied in some of the other items already mentioned.

Item 27 - This item speaks of right of autonomy of indigenous peoples in several matters. In principle the right of internal autonomy must be accepted; at the same time equitable interdependence at the country level similar to inter-country interdependence should also be highlighted.

Item 28 - This item speaks of indigenous rights to decide upon structures of their autonomous institutions. In principle this right must be accepted but the relevance of historical and geopolitical contexts must also be mentioned, otherwise there would be scope for international hegemonic manipulation.

Item 29 - This item speaks of rights of indigenous peoples to determine the responsibilities of the individuals of their own community consistent with the universally recognized human rights. It is now recognized that many of the universally recognized human rights are rights defined by the industrialized West with a Hobbesian world view. While rights of the indigenous peoples to define rights and responsibilities of the individuals belonging to them should be recognized, so-called universally recognized human rights must also be re-examined.

Item 30 - Rights of transborder indigenous peoples to maintain traditional contact have been mentioned in this item. In principle this should be accepted and should be operationalized contextually in an explicitly spelled-out world system perspective.

Item 31 - This item stipulates that indigenous peoples have the right to claim that States or their successors honour treaties and other agreements concluded with indigenous peoples and that they have the right even to invoke international intervention to settle disputes. This cannot be accepted in an unqualified manner. Colonial rulers made many agreements with elements among the indigenous peoples in a selective manner to serve their colonial interests. Some of these were rejected by the indigenous peoples even during the colonial rule; some were discarded after independence through democratic processes. The statement must be modified to take care of such situations.

Item 32 - International intervention in the settlement of disputes of indigenous peoples with States has been provided for in this item. This can be operationalized in an equitable world system perspective. It is unacceptable in the face of the obduracy of powerful countries to accept international discipline, even in recent years.

Items 33 and 34 - These items enjoin States to take effective measures to ensure full enjoyment of indigenous rights, other human rights and fundamental freedoms as these constitute the minimum standard for the survival and well-being of the indigenous peoples of the world. In fact, these rights are essential for the survival and well-being of human life in the world, but the States in the third world countries can operationalize these in an equitable world system. The industrialized countries must show more understanding during the General Agreement on Tariffs and Trades and the United Nations Conference on Trade and Development negotiations; should be less protectionist about the advantages they have gained in questionable manners; they should also be more forthcoming to repair the damages they have caused over the centuries, and should be more humble in claiming the superiority of their techno-economic system. All these are necessary to create an environment wherein the States in the third world countries can operate in the manner stipulated.

Item 35 - It is mentioned that nothing in this declaration may be interpreted as diminishing or extinguishing existing or future rights of the indigenous peoples. This is certainly implied in the discourse and there cannot be any second opinion regarding it.

Item 36 - This item stipulates that indigenous peoples have the right to special protection and security in periods of armed conflict and, ancillary to the same, some special measures have also been stipulated. All the provisions in this item should apply to all citizens, all over the world. Otherwise, this negative discrimination can be used by hegemonic powers in their own interest.

Item 37 - Indigenous customary rights are intended to be protected. This should certainly be done. But so-called universal fundamental rights, which are very much tinged by the western capitalist world view, require to be re-examined. In fact, some elements of the indigenous world view and customary regulation in human relations seem to have a potential for universal application. This item should be re-examined shorn of Eurocentric bias.

Item 38 - It is stipulated that indigenous peoples should not be forcibly removed from their lands or territories. Where relocation occurs, it should be with the free and informed consent of the peoples concerned and after agreement of a fair and just compensation and, where possible, the option of return. In principle, this must be accepted along with its implication for the production, consumption and marketing systems of commodities globally. If there are relevant international instruments relating to them, the same should be mentioned here; if not, mention should be made of the measures to be taken by the concerned United Nations forums to introduce a globally relevant systemic framework.

Item 39 - It has been stated that application of the provisions of this declaration shall not adversely affect the rights and benefits of the indigenous peoples concerned or of any other national of a State pursuant to other international instruments or laws. This is an inadequate proposition. The United Nations specialized and other international agencies should re-examine the adequacy or inadequacy of their respective instruments or laws for operationalizing the generally acceptable provisions of the draft declaration. They should do this in 1993, the International Year of the World's Indigenous People, as a crash programme. As it is, the declaration seems to be more concerned to reinforce interventional mechanisms of the international agencies by using the umbrella word "right of the indigenous peoples". If one follows the sequence of procedures followed step-by-step leading to the formulation of the present draft, and if one examines the ancillary documents, one cannot but feel that a noble cause is being used in a way which may or may not be noble in intention, but in the present world context has little chance to be noble in its outcome.